



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R08-OAR-2022-0359; FRL-9886-02-R8]**

### **Air Plan Approval; North Dakota; Removal of Exemptions to Visible Air Emissions**

#### **Restrictions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to North Dakota's State Implementation Plan (SIP) which it received on November 11, 2016. The revision was submitted by the North Dakota Department of Health (NDDH) in response to EPA's finding of substantial inadequacy and SIP call published on June 12, 2015 for a provision in the North Dakota SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is finalizing approval of the SIP revision and finds that the SIP revision corrects the deficiency identified in the June 12, 2015 SIP call.

**DATES:** This rule is effective on September 1, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2022-0359. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) website. Although listed in the docket, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](https://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Ellen Schmitt, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129,

telephone number: (303) 312-6728, email address: schmitt.ellen@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we” or “our” is used, it refers to EPA.

## **I. Background**

On June 2, 2022 (87 FR 33461), EPA proposed to approve a November 11, 2016 SIP revision submitted by the State of North Dakota, through NDDH.<sup>1</sup> In that proposal, we proposed to determine that the SIP revision corrects the deficiency with respect to North Dakota’s SIP that we identified in our June 12, 2015 action entitled “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” (80 FR 33839, June 12, 2015), hereafter referred to as the “2015 SSM SIP Action.” The reasons for our proposed approval and determination are stated in the proposed action (87 FR 33461, June 2, 2022) and will not be restated here. The public comment period for our proposed approval and determination ended on July 5, 2022, and one comment in support of final approval was received. Therefore, we are finalizing our action as proposed.

## **II. Final Action**

EPA is approving North Dakota’s SIP revision which we received on November 11, 2016. The revision removes provision 33.1-15-03-04.3 from North Dakota’s SIP.<sup>2</sup> EPA has

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<sup>1</sup> In 2017, the North Dakota state legislature created a new State Department of Environmental Quality (NDDEQ) that assumed all the duties and responsibilities of the NDDH’s Environmental Health Section. To accommodate the new NDDEQ, the North Dakota Air Pollution Control Law was recodified in the North Dakota Century Code (NDCC) as NDCC 23.1-06 and the Air Pollution Rules were recodified in the North Dakota Administrative Code (NDAC) as NDAC 33.1-15.

<sup>2</sup> In North Dakota’s November 11, 2016 SIP submission, the State refers to provision 33-15-03.04.3. However, shortly after North Dakota submitted the SIP revision to EPA, the State created a new environmental agency and North Dakota’s Air Pollution rules were recodified as 33.1-15 instead of 33-15. Therefore, the current and correct codification of the provision which is being removed under this action is 33.1-15-03-04.3.

also determined that this SIP revision corrects the deficiency identified in the 2015 SSM SIP Action.

### **III. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of “33.1-15-03-04.3” in 40 CFR 52.1820. As described in Section II of this preamble, EPA’s finalization of the revision of “33.1-15-03-04” incorporates the removal of provision “33.1-15-03-04.3”. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves removal of state law not meeting Federal requirements and does not impose additional requirements beyond those already imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 25, 2022.

KC Becker,  
Regional Administrator,  
Region 8.

40 CFR part 52 is amended as follows:

#### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart JJ—North Dakota**

2. In §52.1820, the table in paragraph (c) is amended by revising the entry “33.1-15-03-04” under the heading “33.1-15-03. Restriction of Emission of Visible Air Contaminants” to

read as follows:

**§ 52.1820 Identification of plan.**

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(c) \* \* \*

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/date	Comments
<b>33.1-15-03. Restriction of Emission of Visible Air Contaminants</b>					
* * * * *					
33.1-15-03-04	Exceptions	7/1/16	[insert date 30 days after date of publication in the Federal Register]	[insert Federal Register citation], [insert date of publication in the Federal Register]	This revision removes provision “33.1-15-03-04.3”.
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[FR Doc. 2022-16276 Filed: 8/1/2022 8:45 am; Publication Date: 8/2/2022]